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April 30, 2003
DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Case Name: Personnel Security Hearing

Date of Filing: November 20, 2003

Case Number: TSO-0007

This Decision concerns the eligibility of XXXXXX XXXXX XXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under Department of Energy (DOE) regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."^{1/} A DOE Security Operations Office (DOE Security) was unable to resolve certain issues regarding the individual's request for an access authorization, and therefore referred the case for administrative review. As set forth in this Decision, I have determined on the basis of the evidence presented and testimony received at a hearing conducted in this matter that the individual's request for a security clearance should be denied.

I. Background

The provisions of 10 C.F.R. Part 710 govern the eligibility of individuals who are employed by or are applicants for employment with DOE, DOE contractors, agents, DOE access permittees, and other persons designated by the Secretary of Energy for access to classified matter or special nuclear material. Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not

^{1/} An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to variously in this Decision as an access authorization or security clearance.

endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

In this instance, the individual held a DOE security clearance as a military assignee and then sought reinstatement of his access authorization as a DOE civilian employee upon retiring from the military. However, in a Notification Letter issued on July 30, 2002, DOE Security initiated formal administrative review proceedings by informing the individual that his access authorization was being withheld pending the resolution of certain derogatory information that created substantial doubt regarding his eligibility. The derogatory information, described in Enclosure 1 of the Notification Letter, falls within the purview of potentially disqualifying factors stated in Section 710.8, paragraphs g and l of the security regulations. More specifically, the Notification Letter alleges that the individual has "failed to protect classified matter . . . or violated or disregarded security or safeguards regulations to a degree which would be inconsistent with the national security," and that he "engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable, or trustworthy." 10 C.F.R. § 710.8(g) and (l) (Criterion G and Criterion L). The bases for these findings are summarized below.

The Notification Letter states that the individual, a retired military officer, admitted during a Personnel Security Interview (PSI) conducted on February 8, 2002, that he took classified military documents from DOE to his home and left them there unattended for more than two years. The Notification Letter further alleges that the individual gave conflicting information regarding his failure to return the classified documents to DOE or to the military for proper secured storage. As a former military officer, the individual is well aware of the rules protecting and procedures for safeguarding classified information. Nonetheless, the Notification Letter states that the individual rationalized his conduct, showed no remorse and further admitted during the PSI that there were other instances during his military career when he did not properly safeguard classified information.

In a letter received by the DOE Office of Hearings and Appeals (OHA) on November 20, 2002, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). On November 26, 2002, I was appointed as Hearing Officer in this case. After conferring with the individual's counsel and the appointed DOE Counsel, 10 C.F.R. § 710.24, a hearing date was established. At the hearing, the DOE Counsel called the Personnel Security Specialist who conducted the PSI and her supervisor, a DOE Security Manager. Apart from testifying on his own behalf, the individual called his former reviewing official, his DOE military commander, his present supervisor and his former military commander. The transcript taken at the hearing will be hereinafter cited as "Tr.". Various documents that were submitted by the DOE Counsel and the individual during this proceeding constitute exhibits to the hearing transcript and will be cited as "DOE Exh." and "Ind. Exh.," respectively.

Summary of Findings

The following factual summary is essentially uncontroverted. However, I will indicate instances in which there are disparate viewpoints regarding the information presented in the record.

The individual held a DOE security clearance from June 1995 to November 2001 in connection with his employment as a military assignee to DOE. Prior to being assigned to DOE, the individual was stationed overseas. Classified military documents that the individual had in his possession at his previous duty station were mailed to DOE under proper procedures. These classified documents primarily consisted of personal notes compiled by the individual while attending Prospective Commanding Officers (PCO) school during the 1990-91 time frame. Upon receiving the documents, the individual placed them in a secured safe located in his DOE office. The material was contained in several one-inch binders and nearly filled one file drawer.

In late May 1998, the individual received orders from his military command that he was to await further direction to report to a new duty station not later than February 1999, and begin training for an upcoming military assignment. The individual was glad to receive these orders since he saw this as an opportunity to advance his military career. In December 1998, the individual received several phone calls from the Chief of Staff at his new duty station informing the individual that he should make arrangements to report immediately. It was Friday of the week and the individual packed his office, in preparation for reporting to his new duty assignment. The individual believed that the classified PCO information contained in his safe might be useful in his anticipated duty assignment, and the individual therefore instructed his secretary to take the documents to the DOE classified mailroom and have them mailed to the address indicated on his orders. However, the individual's secretary returned a few minutes later and informed him that the DOE classified mailroom would not mail or even take possession of the documents because the documents were classified by a branch of the military rather than DOE.

The individual was perturbed at DOE's refusal to take and transmit his military classified documents, but continued to believe that the documents might be useful in his new duty assignment. The individual also believed that he would be reporting directly to his new duty station. During this time, the individual held a duly authorized classified courier card and he therefore decided to transport the documents himself. The individual double-wrapped the PCO material, as required for transport, and took the material home where he placed it in his basement in close proximity to provisions he required at his new duty location. The individual intended to drive to his new duty station that evening. However, just after the individual finished eating dinner, he received a phone call from the Chief of Staff informing him that his new

quarters were not yet ready for occupancy. The individual was instructed that he would be notified in a few days as to when he should report for duty. However, the individual was never contacted.

On that Monday, the individual reported to work at DOE but did not return the classified documents, still believing that he would be leaving for his new duty assignment at any time. The individual tried to contact the Chief of Staff several times over the next few weeks but was unsuccessful. Shortly after the Christmas holiday, the individual went to the military office in charge of transporting household goods for enlisted personnel. It was there that the individual was informed, after a computer check, that his orders had been canceled. The individual was stunned and very disappointed to receive this news. The individual contacted the military officer in charge of detailing his assignment and this officer confirmed that the individual's orders had indeed been canceled. It was clear that the individual would remain at his DOE duty station for the time being. Notwithstanding, the individual did not transport the classified PCO material back to DOE or transport it to a military site, but left the material stored on a shelf in the basement of his home. The individual continued working in his military assignment to DOE over the next few years. In May 2001, the individual made the decision to retire from the military. The individual filed his retirement papers in June 2001, effective November 2001.

However, in September 2001, the individual was required to submit to a DOE counterintelligence polygraph as a prerequisite to his placement in a DOE Special Access Program. In the course of the polygraph examination, the individual was asked whether he had ever intentionally revealed classified information to someone unauthorized to receive it. According to the individual, the PCO classified information he had stored in his basement suddenly occurred to him and his agitated reaction was obvious to the polygraph examiner. The individual therefore temporarily halted the examination and explained to the polygraph examiner the circumstances of the classified documents stored in this basement. Upon resuming, the individual states that he successfully completed and passed the polygraph examination. However, the polygraph examiner reported the matter of the improperly stored classified documents to DOE, as required. The individual was instructed to turn over the classified information to DOE immediately. The individual tendered the documents to DOE on September 28, 2001, and DOE ultimately remitted them to the proper military authority.

In October 2001, the individual sent a memorandum to DOE counterintelligence supplementing the information he had given the polygraph examiner concerning the classified information left in his home. Later that month, a military investigator was assigned to the matter. Pursuant to the military investigation, the individual executed a statement further describing the circumstances of how the classified information came to be stored in his basement for nearly three years. The matter was then referred

to the individual's DOE Military Commander, who issued a Letter of Instruction (LOI) to the individual dated October 31, 2001. While the LOI cautioned the individual against similar misconduct and is disciplinary in tone, the Military Commander concluded in the LOI that the individual's improper storage of the PCO classified information, while serious, did not warrant punitive action under the Uniform Code of Military Justice.

The individual retired from the military on November 1, 2001, and relinquished the DOE access authorization he held as a military assignee to DOE. However, the individual accepted a civilian position with DOE a few days later, on November 5, 2001. In evaluating the individual's request for reinstatement of his DOE access authorization, DOE Security determined that more detailed consideration was required of the individual's improper storage of classified documents at his home. Accordingly, a Personnel Security Interview (PSI) was conducted with the individual on February 8, 2002. In the view of DOE Security, the individual was inconsistent when explaining his actions in not returning the classified PCO documents to a secured area as required by DOE security regulations, and further showed no remorse for his conduct. In addition, the individual appeared to indicate during the PSI that there were other instances during his military career when the individual failed to properly safeguard classified documents. Thus, DOE Security concluded that the individual had failed to resolve its security concerns and referred the case for administrative review.

II. Analysis

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal matter, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. *See Personnel Security Hearing*, Case No. VSO-0078, 25 DOE ¶ 82,802 (1996). In this type of case, we are dealing with a different standard designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once DOE Security has made a showing of derogatory information raising security concerns, the burden is on the individual to come forward at the hearing with evidence to convince the DOE that restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). This standard implies that there is a strong presumption against the granting or restoring of a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my determination that the individual's request for an access authorization should be denied since I do not conclude that such restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(d). The specific findings that I make in support of this determination are discussed below.

A. Individual's Failure to Safeguard Classified Information

The proper safeguarding of classified information goes to the very heart of maintaining national defense and security. Thus, the failure to protect classified information in accordance with security regulations raises very serious concerns. As stated in the *Adjudicative Guidelines* of 10 C.F.R. Part 710, "[n]oncompliance with security regulations raises doubt about an individual's trustworthiness, willingness, and ability to safeguard classified information." Guideline K, Security Violations, ¶ 33, 66 Fed. Reg. at 47070. In the present case, the individual's violation of the security regulations governing the proper storage of classified information^{2/} was prolonged and deliberate. The individual concedes that for nearly three years, from December 1998 until September 2001, he left classified documents stored in an unsecured area on a shelf in the basement of his home. The individual did not return the classified documents to DOE until directed to do so after the matter was revealed by the individual during a DOE counterintelligence polygraph examination.

On the basis of the undisputed record of this case, it is clear that the individual violated the security regulations and DOE Security properly invoked Criterion G in

^{2/} The Personnel Security Specialist and DOE Security Manager concurred in their testimony that the individual did not violate security regulations in transporting the classified documents, assuming they were properly double-wrapped, since the individual held a valid courier card at the time. Tr. at 26-27, 56, 60. However, it is undisputed that the individual violated the security regulations once he failed to deposit the documents in a secure container, either at DOE or a military site, and left them unattended in an unsecured area for nearly three years.

referring the case for administrative review. I further find that DOE Security's determination to invoke Criterion L under these circumstances was proper. In this regard, DOE Security found that there were inconsistencies in the individual's explanation for not returning the classified material, that he showed no remorse for his conduct, and that he appeared to admit to other past instances in which he failed to follow proper procedure for handling classified documents.^{3/} I find that the PSI presents plausible evidence to support these findings. This constitutes evidence of "unusual conduct" which casts into doubt the individual's reliability and trustworthiness. See Criterion L. I therefore turn to whether the individual has presented sufficient mitigating evidence to overcome the legitimate concerns of DOE security.

B. Mitigating Evidence

The individual readily admits that he exercised very poor judgment and should never have left the classified documents at home. The individual knows now that he should have brought them back to DOE on that Monday after he was told not to report to his presumed new duty station. Tr. at 173, 175. If he had done so at that time, he could have simply placed them back in the secured safe in his office. *Id.* The individual testified that later he was hesitant to return the documents to DOE since his office was in the process of reducing the number of safes available for storing classified documents. Tr. at 175. According to the individual, he also believed that his DOE security officer would not take the documents based upon his experience with the DOE mailroom that had refused to mail them to his presumed new duty station. Tr. at 244.

The individual testified that over the next few months, "I kind of forgot about them. . . . [W]hether it's justifiable or not, the reason was, I was just absolutely stunned by the fact that these orders were canceled, and there were other things." Tr. at 184. The "other things" referred to by the individual were that during this time period, the individual was undergoing highly stressful family difficulties, including problems with his marriage and behavioral issues with his two teenage daughters. Tr. at 191-93; see DOE Exh. 4 (PSI) at 79-80.^{4/} The individual also found out during this time frame that

^{3/} During the PSI, the Personnel Security Specialist inquired whether there were any previous times that the individual had taken classified documents home. The individual responded that "in the '60's and '70's, it wasn't that unusual" and then gave two examples. DOE Exh. 4 (PSI) at 87-88.

^{4/} In his statement to DOE counterintelligence, following the polygraph, the individual also raised the circumstances of his personal life: "Those were extremely stressful and tumultuous times for me. In addition to the [cancellation of orders], throughout this period, my wife wanted a divorce, my older daughter was in a rebellious state; my wife and I were both concerned that our younger

(continued...)

his home that he had recently purchased required major costly repairs. *Id.* at 80. Although the individual concedes that his personal life was no excuse, he believes that these matters caused him to forget, at least temporarily, about the classified documents still residing in his basement. In his statement to the military investigator, the individual explained:

I know that keeping the classified material at my home was a mistake. Because of the extent of my family problems and a number of other major difficulties over which I had no control, I completely forgot that I had the notes at my home. Once I placed the documents in my basement in the spring of 1999 I never gave the material another thought until I rediscovered it in late summer 2000. I was looking for something totally unrelated and came across the material in a bookcase. The material had been out of sight and out of mind. I knew I had to do something to properly dispose of the material but I didn't know how to do it. I didn't want to take it back to DOE because they had already told me that they would not process [military classified] material. I felt I had no choice but to keep the material at my residence until I determined a proper course of action.

DOE Exh. 6 (statement to military investigator, October 11, 2001) at 2.

The individual testified that at one point he explored turning the classified documents into a local security office of his military branch, but found that the office only handled security badging and did not have facilities to store classified documents. Tr. at 185. Following this time, the individual testified that he planned to talk to someone at military headquarters about taking the documents since he visited military headquarters "fairly regularly." Tr. at 196. The individual stated, however, that he visited military headquarters only twice after that, as he recalled, and on those occasions he did not have an opportunity to speak to anyone about the documents. *Id.* The individual now accepts that he should have taken greater initiative to arrange acceptance of the material by military headquarters: "I should have gotten it down to [military headquarters] and I didn't." Tr. at 250.

4/ (...continued)

daughter was sinking into serious depression. (She was later diagnosed with manic depression and potentially suicidal.) Besides that, the house we had bought new only to have the builder declare bankruptcy and disappear had four major, structural problems which I was trying desperately to get corrected in order to sell the house. . . . I do not offer the above as an excuse for what I did, but it is descriptive of the environment that resulted in my forgetting about having the material in the first place. Those were things that distracted me from dealing with that material." DOE Exh. 6 (Supplemental Information, dated October 2, 2001) at 2.

In May 2001, the individual made the decision to retire from the military and filed his retirement papers the next month, in June 2001. The individual claims that he decided at this time to turn the classified documents over to the military in the process of being discharged, scheduled for November 2001. DOE Exh. 4 at 83; Tr. at 196-97, 252-53.^{5/} However, the individual was required to submit to the polygraph in September 2001, and the matter was disclosed prior to his final processing for retirement.

The individual testified that there were never any prior instances during his military career when he failed to properly safeguard classified information, and statements he made during the PSI were misconstrued by the DOE Security. Tr. at 230. The individual explained that he was not referring to himself during the PSI when he described instances where military personnel transported classified documents to their homes. The individual maintained that he never received a security infraction while in the military and all instances in which he transported classified documents during his military career were authorized. Tr. at 231-34. The individual is adamant that the present occurrence of violating security regulations by leaving classified documents at home was an isolated incident and that he will never mishandle classified information again. Tr. at 223-24.

The individual is a former officer with a distinguished military career. The individual's former military commander, his DOE commander as well as his past and present DOE supervisors uniformly praised the individual for his honesty and trustworthiness. Tr. at 90, 102-03, 126, 142.^{6/} Each of these witnesses testified that the individual expressed remorse and embarrassment for his poor judgment in failing to return the classified documents to a secure location. Tr. at 91, 106, 126, 141. These witnesses also shared the opinion that the individual learned his lesson and can be trusted to protect classified information in the future. *Id.*

^{5/} The individual submitted a copy of the standard Security Termination Statement that all military personnel must sign prior to official discharge. Ind. Exh. 5. This document requires a certification that "I no longer have any material containing classified information in my possession." *Id.* The individual asserted during the PSI and at the hearing that he never would have signed the Security Termination Statement without having first turned in the classified documents to the military. The individual signed the Security Termination Statement on October 31, 2001, approximately one month after the polygraph.

^{6/} The testimony of the individual's past and present DOE supervisors also establishes that the individual is a highly capable and valued employee. However, the regulations provide that "[p]ossible impact of the loss of the individual's access authorization upon the DOE program shall not be considered by the Hearing Officer." 10 C.F.R. § 710.27(b).

C. Decision

I have thoroughly considered the mitigating evidence presented by the individual. I am persuaded by the individual's testimony that there were no prior incidents during his military career where he failed to safeguard classified information.^{7/} Contrary to the concern stated in Notification Letter regarding the individual's attitude, I am also satisfied on the basis of the testimony presented at the hearing that the individual has displayed genuine contrition for his conduct in this matter. Notwithstanding, I have lingering doubts regarding the explanations the individual has given for failing to return the classified documents to a secure location at either DOE or a military site for nearly three years. I therefore find that the individual has failed to adequately mitigate the concerns of DOE Security with regard to conduct under Criterion G and with regard to his honesty, reliability and trustworthiness under Criterion L.^{8/}

In the case of security violations, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, Appendix B to Subpart A of 10 C.F.R. Part 710, provide that:

Conditions that could mitigate security concerns include actions that:

- (a) Were inadvertent;
- (b) Were isolated or infrequent;
- (c) Were due to improper or inadequate training;
- (d) Demonstrate a positive attitude toward the discharge of security responsibilities.

Guideline K: Security Violations, ¶ 35, 66 Fed. Reg. 47070.^{9/} For the reasons below, I do not find that any of these mitigating factors are applicable under the circumstances of this case.

^{7/} The Personnel Security Specialist and DOE Security Manager testified that their belief that there were prior incidents was based entirely on the individual's statements during the PSI. Tr. at 22-23, 47, 78-79. I have reviewed the transcript of the PSI in the light of the explanations given by the individual during his testimony and I am satisfied that his statements do not establish that there were prior incidents of mishandling classified information during his military career. Tr. at 230-34; see DOE Exh. 4 (PSI) at 87-88.

^{8/} Section 710.7(a) of the security regulations provides that "[a]ny doubt as to an individual's access authorization eligibility shall be resolved in the favor of the national security."

^{9/} The *Adjudicative Guidelines* certainly do not present an exclusive list of possible mitigating factors, but are useful for analyzing the circumstances of this case. I note that counsel for the individual raised Guideline K of the *Adjudicative Guidelines* in support of the individual's claim that the security violation in this case constituted an "isolated" incident. Tr. at 31.

Initially, I do not accept the individual's position that his unsecured storage of classified information in his basement for nearly three years, from December 1998 until September 2001, constituted an "isolated" incident. See Tr. at 31. The Personnel Security Specialist and the DOE Security Manager concurred in their testimony that they did not consider the individual's security violation to be isolated due to the duration of the violation. Tr. at 32, 71. I must agree with their position particularly where, as here, the individual has admitted that at various times during the nearly three-year period, he thought about the documents, considered what he might do to return them yet failed to take action to rectify the situation. The individual is a former military officer who admittedly is knowledgeable with regard to military and DOE security rules, and experienced in handling classified information. Thus, in terms of severity, I consider the individual's improper storage of classified information in this case to be both multiple and willful.

The individual has offered essentially four explanations for failing to return the documents to a secure location prior to the polygraph examination: (1) he "forgot" that he had the documents in his basement due to stressful circumstances in his life; (2) DOE indicated that they would not take the classified documents; (3) he never found the opportunity to take them to a suitable military site; and (4) he decided he would turn the documents in upon his retirement. However, I have difficulty with each of these explanations.

The individual has been inconsistent in describing the level to which he "forgot" about the classified documents stored in his basement. The individual told the military investigator that after placing the classified documents in his basement, "I never gave the material another thought until I rediscovered it late summer 2000." DOE Exh. 6. During the PSI, the individual stated initially that "I had completely forgot about it," until his memory was provoked by the polygraph examination. DOE Exh. 4 at 46. Later during the same PSI, however, the individual revealed that he had explored the possibility of turning the documents into a military office "probably back around there in early '99" and ultimately decided, in May or June 2001, that he would turn the documents in upon retirement discharge in November 2001. *Id.* at 82-83. At the hearing, the individual testified that despite his previous statements he never intended to suggest to the military investigator or to the Personnel Security Specialist that he completely forgot about the documents. Tr. at 186-87. The individual now states that "I kind of forgot about them," and "I would think of it from time to time." Tr. at 184, 186. Moreover, the individual now concedes that the stressful circumstances of his life, which later abated, were no excuse for failing to take any action with regard to the classified documents and that "I was absolutely wrong" in giving that explanation during the PSI. Tr. at 219.

The individual's explanation that DOE would not take possession of his military classified documents was apparently the individual's own supposition, with no factual

basis. According to the individual, he made the decision to transport the classified documents himself when his secretary informed him that the DOE classified mailroom would not mail the documents to his anticipated duty station. Tr. at 162. However, the individual was never informed by anyone that DOE would not take and store the classified information. The individual conceded that he never attempted to contact his DOE security officer, his DOE supervisor or his DOE military commander about the documents. Tr. at 164-66. During my examination of the individual, I inquired:

Q: Did you talk to anyone at DOE about the documents between the time the secretary had given you this information way back when you received the orders and the time, ultimately, that you did bring the documents after the polygraph? Did you ever talk to anyone at DOE about it?

A: No, I -- no, I don't recall doing that. I should have, but I didn't.

Tr. at 251. The individual's apparent belief that DOE would not take the documents may well be unfounded. Contrary to the individual's supposition, the DOE military commander testified that military personnel under his command at DOE have never had a problem in having military classified information stored at DOE, testifying that: "We have people that are very accommodating and will make room in proper safes to store and secure and accommodate anybody who needs that service." Tr. at 134.

Next, I am perplexed by the individual's explanation that he never found the opportunity to make arrangements to bring the documents into military headquarters^{10/} or another military site. The individual was a decorated military officer and therefore someone who is accustomed to being decisive on matters of importance. The individual's former military commander testified that he was "most impressed with [the individual] under stress" and rated the individual high in terms of "integrity, initiative, leadership." Tr. at 103. The individual's former supervisor similarly testified that in his position at DOE, the individual frequently deals with "stressful circumstances and always rather quick deadlines to turn around" and that the individual "reacts very well" under these circumstances. Tr. at 89. For some reason that remains unclear, the individual did not demonstrate the kind of

^{10/} While the DOE had reportedly refused to mail the military classified documents for him, the individual knew this was not a closed issue. He noted at one juncture during his testimony that "unofficially, I could have called a friend in [military headquarters] or something and said, hey, would you get your office to mail this stuff for me. And, you know, I'm sure that if I had taken the time, waited 'till Monday or something, I could have done that." Tr. at 168. It is apparent that the individual might have arranged secure storage of the classified documents at military headquarters in the same manner. Ostensibly, as an officer, the individual was in a position to make things happen in his favor, even in circumstances where someone of a lower rank could not.

accountability and decisiveness that his background and accomplishments suggest, and took no action to deal with the classified documents housed in his basement for nearly three years. It is apparent, and I find disturbing, that the individual simply did not attach great importance to returning the classified documents to a secure location, as required by the security regulations.

Finally, we have only the individual's word that he would have done the right thing by turning the classified documents into the military upon his retirement in November 2001, had the polygraph examination not intervened. Tr. at 252-53. The individual filed his retirement papers in June 2001. According to the DOE Security Manager, "[t]he fact that he had even filed retirement papers raised the question, would he have ever turned it in had it not been discovered during a polygraph examination." Tr. at 48.^{11/} I share the concern of the DOE Security Manager. While the individual appeared to be candid in asserting that he would have turned the documents in prior to his official retirement,^{12/} his inaction with regard to the documents for nearly three years speaks at least as loud as his words about his intentions. The simple fact remains that the individual improperly stored classified documents in his home for nearly three years and did not return them until compelled to do so after the matter was uncovered during a polygraph examination.

III. Conclusion

As explained in this Decision, I find that DOE Security properly invoked 10 C.F.R. §§ 710.8(g) and (l) in withholding reinstatement of the individual's access authorization. I further find that the individual has failed to mitigate the legitimate concerns of DOE Security. Consequently, I do not find that granting the individual's access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. Accordingly, I have determined that

^{11/} The Personnel Security Specialist held the same view, testifying that "if there had not been the polygraph, there wasn't any -- there was no reason for me to believe that [the individual] would have returned the information." Tr. at 38.

^{12/} While the individual appears to be forthright in asserting that he planned to turn the documents in during final retirement processing, I find it interesting that the individual did not mention this in his statement to DOE counterintelligence or to the military investigator in October 2001. DOE Exh. 6. In his statement to the military investigator, the individual states only that "I felt I had no choice but to keep the material at my residence until I determined a proper course of action." *Id.* Apparently, the PSI in February 2002 was the first occasion that the individual stated that it has been his intention, prior to taking the polygraph, to turn in the documents upon leaving the military in November 2001. DOE Exh. 4 (PSI) at 83.

the individual's request for an access authorization should be denied. The individual may seek review of this Decision by an Appeal Panel in accordance with the provisions set forth in 10 C.F.R. § 710.28.

Fred L. Brown
Hearing Officer
Office of Hearings and Appeals

Date: April 30, 2003